IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 8756 of 2007(P)

PETITIONER:

I.B.P CO. LIMITED, ERNAKULAM,
REP. BY M.RAVIBALASUBRAHMANYAM,
SR.MANAGER(F & A).

BY ADV. SRI.JOSE JOSEPH.

RESPONDENTS:
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1. **THE ASST. COMMISSIONER(ASSMT.)I,**
   SPECIAL CIRCLE II, COMMERICIAL TAXES,
   ERNAKULAM.

2. **THE DEPUTY COMMISSIONER(APPEALS)II,**
   COMMERCIAL TAXES, ERNAKULAM.

BY SR. GOVT. PLEADER SRI. MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.8756/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE SRO. 206/02 DTD. 30/03/2002.

EXT.P.2: COPY OF THE ORDINANCE NO. 2/2002 DTD. 03/04/2002.

EXT.P.3: COPY OF THE SRO 258/02 DTD. 12/04/2002.

EXT.P.4: COPY OF THE SRO 882/04 DTD. 09/08/2004.

EXT.P.5: COPY OF THE ASSESSMENT ORDER UNDER THE KGST ACT FOR THE YEAR 2002-03 DTD. 27/10/2006.

EXT.P.6: COPY OF THE APPEAL BEFORE THE R.2. AGAINST EXT. P.5. ORDER DTD. 30/01/2007.

EXT.P.7: COPY OF THE STAY PETITION FILED ALONG WITH EXT.P.6 APPEAL DTD. 30/01/2007.

EXT.P.8: COPY OF THE ORDER OF THE R.2. IN EXT. P.7 STAY PETITION.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.8756 of 2007-P

Dated this the 15th day of March, 2007

JUDGMENT

The petitioner which is a public sector oil company challenges Ext.P8 order by which it has been directed to pay 1/3 of the disputed tax. It is pointed out on behalf of the petitioner that in view of Ext.P4 notification, cancelling the retrospectivity given to enhancement of tax from 1-4-2002 to 11-4-2002 the tax paid is correct and no further amount will be due. So, it is submitted absolute stay should have been granted.

2. I heard the learned Government Pleader for the respondents.

3. Prima facie, I find considerable force in the submission of the petitioner. Accordingly, recovery of amount pursuant to Ext.P5 will remain in abeyance till the disposal of Ext.P6 appeal for four months from today. The appellate authority is directed to pass final orders in the appeal as expeditiously as possible and at any rate within three months from today. The petitioner shall produce a copy of this judgment before the appellate authority within three weeks from today. The petitioner shall co-operate with the hearing of the appeal and if unjustified representation for adjournment is sought, the appellate authority need not grant the same.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS